

RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY

RE: MODIFICATION OF THE URBAN RENEWAL PLAN OF THE
SOUTH END URBAN RENEWAL AREA, PROJECT NO. MASS.
R-56 AND AUTHORIZATION TO PROCLAIM BY CERTIFICATE
THIS MINOR MODIFICATION

WHEREAS, the Urban Renewal Plan for the South End Urban Renewal Area was adopted by the Boston Redevelopment Authority on September 23, 1965, and approved by the City Council of the City of Boston on December 6, 1965; and

WHEREAS, Section 1201 of Chapter 12. of said Plan entitled: "Modifications" provides that the Urban Renewal Plan may be modified at any time by the Boston Redevelopment Authority without further approval provided that the proposed modification does not substantially or materially alter or change the Plan; and

WHEREAS, it is the opinion of the Boston Redevelopment Authority that the minor modification with respect to Parcel P-6A is consistent with the objectives of the South End Urban Renewal Plan; and

WHEREAS, the Boston Redevelopment Authority is cognizant to Chapter 781 of the Acts and Resolves of 1972 with respect to minimizing and preventing damage to the environment;

WHEREAS, the proposed amendment to the plan is a minor change and may be adopted within the discretion of the Boston Redevelopment Authority pursuant to Section 1201 of said Plan;

NOW, THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY,

1. Pursuant to Section 1201 thereof of the South End Urban Renewal Plan, Mass. R-56 be, and hereby is, amended by:

a. That Chapter VI, "Land Use, Building Requirement and Other Controls," Section 602, Table A "Land Use and Building Requirements" is hereby modified by: inserting in the line for Parcel P-6, the designation "P-6A" in the column headed "Reuse Parcel Number," and the designation "HH" in the column headed "Planning and Design Requirements," and by adding note "HH: used for community garden".

2. That the proposed modification is found to be a minor modification which does not substantially or materially alter or change the Plan.

3. That all other provisions of said Plan not inconsistent herewith be and are continuing in full force and effect.

4. That it is hereby found and determined that the proposed development will not result in significant damage to or impairment of the environment and further, that all practicable and feasible means and measures have been taken and are being utilized to avoid or minimize damage to the environment.

5. That the Director be, and hereby is, authorized to proclaim by certificate this minor modification of the Plan, all in accordance with the provisions of the Urban Renewal Handbook, RHM7207, 1, Circular dated June 3, 1970.



MEMORANDUM**TAKEN UNDER ADVISEMENT
OCTOBER 22, 1992****NOVEMBER 10, 1992**

TO: BOSTON REDEVELOPMENT AUTHORITY AND
PAUL L. BARRETT, DIRECTOR

FROM: THOMAS O'MALLEY, ASSISTANT DIRECTOR,
NEIGHBORHOOD HOUSING AND DEVELOPMENT
MARIA FARIA, DEPUTY DIRECTOR

SUBJECT: SOUTH END URBAN RENEWAL AREA, PROJECT NO. MASS. R-56:
MINOR MODIFICATION OF THE SOUTH END URBAN RENEWAL PLAN

SUMMARY: This memorandum requests that the Boston Redevelopment Authority (BRA) adopt a Minor Modification of the South End Urban Renewal Plan with respect to Parcel P-6A and that the BRA authorize the Director to proclaim by certificate this minor modification.

Parcel P-6A, known as the Berkeley Street Community Garden site, consists of approximately 47,516 square feet of vacant land which is currently being used as a community garden. This site is bounded by 500-510 Tremont Street, 1-67 East Berkeley Street and 211-217 Shawmut Avenue in the South End Urban Renewal Area, Project No. Mass. R-56. Parcel P-6A was created from Parcel P-6. The original South End Plan called for the widening of East Berkeley Street. The plan since then has been modified to exclude the widening of East Berkeley Street and now the newly formed P-6A excludes East Berkeley Street.

On May 20, 1992, the South End/Lower Roxbury Open Space Land Trust ("Trust") was granted final designation as Redeveloper of Parcel P-6A for the continued use of a neighborhood garden.

The implementation of the open space plan for the site by the Trust will require a minor change to the South End Urban Renewal Plan adopted by the BRA on September 23, 1965. The amendment will add Parcel P-6A to the Table of "Land Use and Building Requirements" and will permit the use of Parcel P-6A for a community garden.

Section 1201 of the South End Urban Renewal Plan provides that minor modifications may be made at any time by the BRA when such modification is found to be, in the reasonable opinion of the BRA, minor, and not substantial or material alteration of the Plan.

Accordingly, it is necessary to effect a minor modification of the South End Urban Renewal Plan by: (1) adding Parcel P-6A and item "HH" to the "Planning and Design Requirements" set forth in Table A referenced in Section 602 of the South End Urban Renewal Plan; and (2) authorizing the Director to proclaim by certificate this minor modification.

In the opinion of the General Counsel, the proposed modification is minor and does not, substantially or materially, alter or change the Plan.

It is, therefore, recommended that the BRA adopt the attached resolution: (1) modifying Section 602 thereof, Table A, "Land Use and Building Requirements"; and (2) authorizing the Director to proclaim the modification.

The concerns which were expressed at the October 22, 1992 Board of Directors meeting have been satisfied. Modifications have made to the Land Disposition Agreement (LDA) in Article III, Section 301(a): "Restrictions and Controls Upon Redevelopment", by stating that the Property only be used in accordance with the uses specified in the Plan namely, as a park or community garden.

The LDA provides in Article VIII, Section 806(3): "Consequence of Breach by Redeveloper with Respect to Use of Property", that in event of a violation under this Section, the BRA shall have the right to retake the Property, and all right, title and interest of the Redeveloper, any successors or assigns in interest, by the exercise of its power of eminent domain. The Redeveloper, its successor or assigns, hereby consents to said taking and waives any and all rights or claims for damages resulting from said taking.

An appropriate Resolution is attached:

LAND DISPOSITION AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of November, 1992, by and between the BOSTON REDEVELOPMENT AUTHORITY and SOUTH END/LOWER ROXBURY OPEN SPACE LAND TRUST, INC.

The parties hereto do hereby agreed as follows:

ARTICLE I

DEFINITIONS

Section 101: Defined Terms

For the purpose of this Agreement, the following terms shall have the meanings, respectively, ascribed to them below:

- a. "City" shall mean the City of Boston, Massachusetts.
- b. "Authority" shall mean the Boston Redevelopment Authority, a public body, politic and corporate, organized and existing pursuant to Chapter 121B of the Massachusetts General Laws (Ter. Ed.), as amended, and shall include any successor in interest, whether by act or a party to this Agreement or by operation of law or otherwise.
- c. "Redeveloper" shall mean the South End/Lower Roxbury Open Space Land Trust, Inc., a Massachusetts charitable corporation, and shall include any successor in interest or assign, whether by act of a party to this Agreement or by operation of law or otherwise, but shall not mean mortgagees or holders of building loan agreements.
- d. The "Property" refers to the parcel of land in the South End Urban Renewal Project Area more fully described in the Exhibit A attached hereto and made a part hereof.
- e. "Plan" shall mean the South End Urban Renewal Plan, adopted by the Authority on September 23, 1965 and approved by the City Council of the City of Boston on December 2, 1965 and as it may be amended in accordance with the provision therein contained, a copy of which has been delivered to the Redeveloper. The "term of the Plan" shall mean a period of 40 years from and after September 23, 1965. "Plan Area" shall mean the area in the City of Boston to which the said Plan pertains, as indicated by the boundary descriptions and maps therein.

f. "Director" shall mean the Director of the Boston Redevelopment Authority, or any person designated by him to act in his behalf.

g. "Deed" shall mean the instrument, to be recorded with this Agreement in Suffolk County Registry of Deeds in Boston, Massachusetts, whereby the Property is conveyed to the Redeveloper.

h. "Deed Plans" shall mean Exhibit "A" attached hereto and made a part hereof.

i. "Closing Date" shall mean the date referred to in Section 204 of this Agreement.

j. "Term of Restrictions" shall mean the later of the term of the Plan or 30 years from the date hereof.

ARTICLE II

TRANSFER OF THE PROPERTY AND PAYMENT THEREFOR

Section 201: Covenant of Sale

Subject to all of the terms, covenants and conditions of this Agreement, the Authority agrees to sell and convey and the Redeveloper covenants and agrees to purchase the Property.

Section 202: Condition of Land to be Conveyed

The Authority and the Redeveloper covenant and agree that the Property shall be conveyed in "as is" condition, free and clear of all tenants and occupants except for persons having garden plots under license from the Redeveloper and the Authority.

Section 203: Purchase Price and Payment Therefor

The purchase price for the Property shall be one dollar and shall be paid on the Closing Date by certified or bank check drawn to the order of the Authority.

Section 204: Time of Sale and Conveyance

The sale and conveyance and delivery of possession of the Property and the purchase of the same by the Redeveloper, shall take place at a date as may be agreed upon by the parties, no later than ninety days from the date hereof at the office of the Authority at City Hall, Boston, Massachusetts.

Section 205: Title and Instrument of Conveyance

The sale and conveyance shall be Quitclaim Deed of good and marketable fee simple title free and clear of all liens and encumbrances, but subject to and with the benefit of all condi-

tions, covenants, easements, and restrictions set forth or referred to in this Agreement and the Plan or in either thereof.

Section 206: Federal Tax Stamps and Other Closing Costs

The Redeveloper shall pay the costs of any Federal or State documentary tax stamps which shall be required and the cost of recording the Deed, this Agreement, and all other instruments and plans to be recorded together with the Deed.

Section 207: Adjustments

The Authority shall pay all taxes, sewer and water charges and other assessments or charges allocable with respect to any period before delivery and conveyance to the Redeveloper of the Deed hereunder. Taxes, charges or assessments allocable with respect to any period after delivery to the Redeveloper of a Deed hereunder shall be paid by the Redeveloper. The Redeveloper shall not be obligated to pay the Authority any payment in lieu of taxes because the Redeveloper is a corporation organized and operated for charitable purposes, and the Property will be exempt from property taxes after delivery of the Deed.

Section 208: Conditions Precedent to Conveyance

The Redeveloper shall not be obligated to deliver Final Working Drawings and Specifications or agreements for construction or financing, as the Redeveloper is not obligated to erect any buildings or make improvements to the Property.

Section 209: Default by Authority

In the event that the Authority shall be unable to give title or to make conveyance or to deliver possession of the Property as provided for herein, then all obligations of the parties hereunder shall cease and this Agreement shall be void without recourse to the parties hereto, unless the Authority shall elect to use reasonable efforts to remove any defect in title or to deliver possession as herein agreed, as the case may be, in which event the Authority shall give written notice thereof to the Redeveloper at or before the time for performance by the Authority hereunder, and thereupon the time for the performance by the Authority shall be extended for a period of ninety (90) days, or such longer period as the Authority and the Redeveloper shall mutually agree; provided, however, that the Redeveloper shall have the election, either at the original or any extended time for performance, to accept such title or possession as the Authority can deliver to the Property and to pay therefor without deduction, in which case the Authority shall convey such title to the Redeveloper. In the event that at the expiration of the extended time the Authority shall be unable to give title or to make conveyance or to deliver possession as herein provided; then (1) the deposit, if any, together with any interest earned thereon, shall be refunded, but only if the deposit has not been re-

tained by the Authority pursuant to Section 801 or 802 herein, provided, however, that nothing herein contained shall require the Authority to earn any interest on the deposit; (2) all obligations of the parties hereto shall cease; and (3) this Agreement shall be void and without recourse to the parties hereto. The acceptance of a Deed by the Redeveloper shall be deemed a full performance and discharge of every agreement and obligation herein contained with respect to the Property, except such as are to be performed after the delivery of the Deed.

ARTICLE III

RESTRICTIONS AND CONTROLS UPON REDEVELOPMENT

Section 301: Restrictions on Use

a. The Redeveloper agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part thereof, and the Deed shall contain covenants on the part of the Redeveloper for itself, and its successors and assigns, that the Redeveloper, its successors and assigns shall:

1. Devote the Property only to and in accordance with the uses specified in the Plan (namely, as a park or community garden);
2. Not discriminate upon the basis of race, color, sex, religion or national origin in the sale, lease or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof; and
3. Use the property for cultivation of herbs, fruits, flowers or vegetables, and for passive recreational uses including walkways, picnic areas and sitting areas, lawns and gardens, and facilities appurtenant thereto.

b. It is intended and agreed, and the Deed shall so expressly provide, that the covenants provided in subsection (a) of this Section shall be covenants running with the land binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Authority, its successors and assigns, the City of Boston, and in the case of the covenant provided in subparagraph (2) of subsection (a), the United States, both for and in its or their own right and also to protect the interest of the community and other parties, public and private, in whose favor or for whose benefit the covenants have been provided, against the Redeveloper, its successors and assigns, and every successor in interest to the Property or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that the covenants provided in subparagraph 5 (1) and (3) of subsection (a) shall remain in effect for the Term

of Restrictions, or until such date thereafter to which such term may be extended by proper amendment of the Plan. The covenant provided in subparagraph (2) of subsection (a) shall remain in effect without limitation as to time. The terms "uses specified in the Plan" and "land use" referring to provisions of the Plan, or similar language, in this Agreement shall include the land and all buildings, housing, and other requirements or restrictions of the Plan pertaining to such land.

c. The Redeveloper agrees for itself, its successors and assigns, that the Redeveloper, and its successors and assigns, shall develop and carry out to the Authority's reasonable satisfaction a program of advertising for the sale and/or rental of the whole and any individual parts or parcels of the Property, and shall include in all such advertising (including signs), the legend "An Open Occupancy Building", in type or lettering of easily legible size and design. The word "Project" or "Development" may be substituted for the word "Building" where circumstances require such substitution.

d. The Redeveloper agrees for itself, its successors and assigns, that the Redeveloper, and its successors and assigns, shall include in all such advertising for the sale or rental of the Property, a statement to the effect: (a) that the Property is open to all persons without discrimination on the basis of race, color, sex, religion or national origin; and (b) that there shall be no discrimination in public access and use of the property to the extent that it is open to the public.

Section 302: [Intentionally Omitted]

Section 303: [Intentionally Omitted]

Section 304: [Intentionally Omitted]

Section 305: [Intentionally Omitted]

Section 306: [Intentionally Omitted]

Section 307: Access to the Property by Authority and City Personnel

The Redeveloper, its successors and assigns, shall from time to time until the expiration of the Term of Restrictions, at all reasonable hours, give to the duly authorized representatives of the Authority, the City, and the United States of America, free and unobstructed access for inspection purposes to any and all of the improvements constructed on the Property by the Redeveloper, its successors and assigns, and to all open areas surrounding the same.

ARTICLE IV

TRANSFER AND MORTGAGE OF REDEVELOPER'S INTEREST

Section 401: General Terms Relating to Transfer of Interest in Property by Redeveloper

- a. [Intentionally Omitted]
- b. [Intentionally Omitted]
- c. [Intentionally Omitted]

d. The Redeveloper may assign or otherwise transfer any portion of or interest in the Property, or any interest in the Redeveloper may be assigned or transferred, to the extent permitted by and subject to the provisions of this Agreement and the Plan.

Section 402: Mortgage of Property by the Redeveloper

Notwithstanding any other provisions of this Agreement, the Redeveloper shall at all times have the right to encumber, pledge, or convey its rights, title and interest in and to the Property, or any portion or portions thereof, and partners of the Redeveloper, if any, shall have at all times the right to encumber their individual partnership interests, by way of a bona fide mortgage to secure the payment of any loan or loans obtained by the Redeveloper to finance the development, construction, repair or reconstruction of any of the improvements required to be constructed by the Redeveloper on the Property by the Plan and this Agreement, or to refinance any outstanding loan or loans therefor obtained by the Redeveloper for any such purpose; provided, however, that the Redeveloper and its individual partners, as the case may be, shall give prior written notice to the Authority of its or their intent to exercise such rights hereunder, including in such notice the name(s) and address(es) of such mortgage(s) and any other information regarding the mortgage(s) and mortgage documents which the Authority may require.

Section 403: [Intentionally Omitted]

Section 404: Rights and Duties of Mortgagee Upon Acquisition After Completion

If a mortgagee, by foreclosure acquires the mortgage or fee simple title to the Property or any portion thereof, the mortgagee for the period during which said mortgagee holds such title, shall comply with applicable provisions of this Agreement.

ARTICLE V

PROVISIONS RELATING TO OPERATION AND MAINTENANCE

Section 501: Maintenance and Operation of Improvements

The Redeveloper shall, at all times until the expiration of the Term of Restrictions, keep the improvements constructed on the Property in good and safe condition and repair unless such improvements shall have become uninsurable, and in the occupancy, maintenance and operation of such improvements, the Property shall comply with the terms and conditions of the Plan and with all laws, ordinances, codes and regulations applicable thereto.

Section 502: Additions or Subtractions to Improvements

The Redeveloper shall not, until the expiration of the Term of Restrictions, reconstruct, demolish, subtract from any improvements on the Property, make any additions thereto or extensions thereof, or change the materials, design, dimensions of color thereof, if such reconstruction, demolition, subtraction, addition, extension or change will affect in any way the external appearance of any building (including roof and penthouse) or landscaping without the prior written approval of the Authority. All such alterations shall be in conformance with the plans presented to the Authority and approved by the Authority in connection with a Final Designation Resolution dated May 20, 1992. In the event the Redeveloper shall fail to comply with the foregoing requirement, the Authority may within a reasonable time after its discovery thereof, direct in writing that the Redeveloper so modify, reconstruct or remove such portion or portions of the improvements as were reconstructed, demolished or subtracted from or added to or extended or changed without the prior written approval of the Authority. The Redeveloper shall promptly comply with such a directive, and shall not proceed further with such reconstruction, demolition, subtraction, addition, extension or change until such directive is complied with. Any such reconstruction, demolition, subtraction, addition, extension or change undertaken pursuant to the prior written approval of the Authority shall in all respects be in accordance with and conform to the provisions of the Plan. This Section shall not regulate the planting of individual garden areas.

ARTICLE VI

INDEMNIFICATION

Section 601: Reimbursement of Authority in Respect of Certain Litigation

The Redeveloper shall pay all reasonable costs and expenses, and the amounts of all judgements and decrees which may be

incurred by the Authority in any proceedings brought to enforce the obligations of the Redeveloper set forth in the provisions of this Agreement. It is expressly understood, however, that the mortgagee under any mortgage permitted hereunder shall not be liable to the Authority for any costs, expenses, judgements, decrees or damages which shall have accrued against the Redeveloper except that a mortgagee who becomes a mortgagee after, and who acquires title after the Redeveloper has become liable for any costs, expenses, judgements, decrees or damages, shall be liable for such liabilities.

ARTICLE VII

INSURANCE

Section 701: Insurance Coverage

a. Until the expiration of the Term of Restrictions the Redeveloper shall keep all of the insurable property and equipment in respect of the Property insured by fire and extended insurance and additional risk insurance to the same extent and amount which is normally required by institutional mortgagees in the use of similar property and equipment in the City. Such insurance shall be in an amount sufficient to comply with the co-insurance clause applicable to the location and character of the property or equipment, and, in any event, in amounts not less than eighty per centum (or eighty per centum in the case of extended coverage insurance) of the current cash value of such property or equipment. All such insurance shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts, and shall have attached thereto a clause making the loss payable to the Redeveloper, the mortgagee, and, subject to the rights of the mortgagee, the Authority as their respective interests may appear.

b. Each insurance policy shall be written to become effective at the time the Redeveloper becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Redeveloper is subject to such risk or hazard.

c. Certificates of such policies and renewals shall be filed with the Authority.

d. Redeveloper shall not be obligated to insure tool sheds, small utility buildings, gazebos or similar small or temporary structures.

Section 702: Non-Cancellation Clause

All insurance policies shall provide that any cancellation, change or termination thereof shall not be effective with respect

to the Authority until after at least ten (10) days prior notice has been given to the Authority to the effect that such insurance policies are to be cancelled, changed, or terminated at a particular time.

Section 703: Authority May Procure Insurance if Redeveloper Fails to Do So

If the Redeveloper at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the Authority at its option, may procure or renew such insurance, and all amounts of money paid therefor by the Authority shall be payable by the Redeveloper to the Authority; with interest thereon at the rate of twelve per centum (12%) per annum from the date the same were paid by the Authority to the date of payment thereof by the Redeveloper. The Authority shall notify the Redeveloper in writing of the date, purposes, and amounts of any such payments made by it.

Section 704: Redeveloper's Obligations with Respect to Restoration and Reconstruction

a. Whenever any improvements, or any part thereof, constructed on the Property shall have been damaged or destroyed prior to the expiration of the Term of Restrictions, the Redeveloper shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. All proceeds of any such claim and any other monies provided for the reconstruction, restoration or repair of any such improvement, shall be deposited in full in a separate account of the Redeveloper or of any mortgagee.

b. The insurance money and any other proceeds so collected shall be used and expended for the purpose of fully repairing or reconstructing the improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction to the extent that such insurance money and other proceeds may permit. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by the Redeveloper, subject to the rights of any mortgagee of record permitted hereunder and the rights of the Authority.

c. The Redeveloper, with the written approval of the Authority and any mortgagee of record permitted hereunder, may determine that all or any part of any such damage to or destruction of such improvements shall not be reconstructed, restored, or repaired, and in such event, the proceeds of any claims against insurers or others arising out of such damage or destruction, to the extent not used for such reconstruction, restoration, or repair shall be retained by the Redeveloper, subject to the rights of such mortgagee and the rights of the Authority.

d. Any reconstruction or repair undertaken pursuant to the provisions of this Section shall in all respects be in accordance with and conform to the provisions of the Plan, and the provisions of this Agreement.

Section 705: Commencement and Completion of Reconstruction

The Redeveloper shall commence to reconstruct or repair any improvements and equipment on the Property, or any portion thereof, which have been destroyed or damaged prior to the expiration of the Term of Restrictions, within a period not to exceed six (6) months after the insurance or other proceeds with respect to such destroyed or damaged property have been received by the Redeveloper or any mortgagee (or, if the conditions then prevailing require a longer period, such longer period as the Authority may specify in writing), and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion, such reconstruction or repair in any event to be completed within twenty-four (24) months after the start thereof.

ARTICLE VIII

BREACH

Section 801: Failure or Refusal by Redeveloper to Purchase Fee Simple Title and Accept Possession

If the Redeveloper shall fail or refuse to complete the purchase and accept possession of the Property upon proper tender of conveyance by the Authority pursuant to this Agreement, or there is any unauthorized change in the ownership or distribution of the relative partnership interests in the Redeveloper or with respect to the identity of the parties in control of the Redeveloper or degree thereof, the Authority shall have the right to retain the deposit, if any, held by it pursuant to this Agreement as full liquidated damages, but not as a penalty, without any deduction or offset whatever and without further liability to the Authority on the part of the Redeveloper; and the Authority may, upon such failure or refusal, in its sole discretion terminate, by fifteen (15) days prior written notice to the Redeveloper, all of its obligations to the Redeveloper hereunder, in addition to retaining such deposit. In the event there is no such deposit, all the remedies available to the Authority under Section 805 of this Agreement shall apply to defaults under this Section 801.

Section 802: [Intentionally Omitted]

Section 803: Notices of Breaches to Mortgagees

If the Authority gives written notice to the Redeveloper of a default under this Agreement, the Authority shall forthwith furnish a copy of the notice to each of the mortgagees of record of the Property permitted under this Agreement. To facilitate

the operation of this Section, the Redeveloper shall at all times keep the Authority provided with an up-to-date list of names and addresses of mortgagees and holders of building loan agreements from whom the Redeveloper has obtained loans as permitted under this Agreement. Any such mortgagee or holder may notify the Authority of its address and request that the provisions of Section 907 as they relate to notices apply to it. The Authority agrees to comply with any such request.

Section 804: Mortgagee May Cure Breach of Redeveloper

If the Redeveloper has received notice from the Authority of a default under this Agreement and such breach is not cured by the Redeveloper before the expiration of the period provided therefor, the holders of record of building loan agreements or mortgages on the Property as permitted under this Agreement may cure any such breach upon giving written notice of their intention to do so to the Authority within ninety (90) days after such holder receives such notice of breach, and shall thereupon proceed with due diligence to cure such breach.

Section 805: Remedies for Other Breaches

It is understood by the parties hereto that in the event any party shall fail to comply with or violate any of the provisions of this Agreement, then the other party hereto may institute such actions and proceedings as may be appropriate, including actions and proceedings to compel specific performance and payment of all damages, expenses, and costs. Neither those remedies nor that class of remedies more particularly described in this Agreement shall be exclusive unless specifically so described, provided, however, that the remedies prescribed in Section 801 for the defaults therein described shall be exclusive.

Section 806: Section 806: Consequence of Breach by Redeveloper With Respect to Use of Property

If during the Term of Restrictions, the Redeveloper shall fail to perform its obligations under Section 301a(1) or (3) of this Agreement with respect to restrictions on use of the Property, then:

1. The Authority shall in writing notify the Redeveloper of such failure or violation. The Redeveloper shall thereupon have ninety (90) days from the receipt by it of such written notice to cure such failure or violation.
2. If the Redeveloper does not cure such failure or violation within the 90-day period (or within such extended period of time as may be established by the Authority acting solely in its discretion) and if the holders of record of building loan agreements and/or first mortgage in replacement thereof do not exercise their rights to cure such violation or failure (as

provided in Section 804 hereof), the Redeveloper shall promptly transfer possession of, and reconvey, the Property together with all of the Improvements thereon, to the Authority without cost to the Authority, by quitclaim deed. If the Redeveloper shall fail so to reconvey, the Authority may institute such actions or proceedings as it may deem advisable as well as proceedings to compel specific performance and the payment of damages, expenses and costs by the Redeveloper.

3. In the event of a failure to cure under this Section, the Authority shall have the right to retake the property, and all right, title and interest of the Redeveloper, any successors or assigns in interest, by the exercise of its power of eminent domain. The Redeveloper, its successor or assigns hereby consent to said taking and waives any and all rights or claims for damages resulting from said taking. it being the intent of the parties that the conveyance of the property to the Redeveloper by the Authority shall be made upon the Deed shall contain, a condition subsequent to the effect that in the event of a failure to cure under this Section, the Redeveloper, its successor and assigns, consents to an Eminent Domain Taking by the Authority and waives any and all claims land right to damages resulting therefrom.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 901: Obligations and Rights and Remedies Cumulative and Separable

The respective rights and remedies of the Authority, the City of Boston, and the Redeveloper, whether provided by this Agreement or by law, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times of any other such rights or remedies.

Section 902: Finality of Approvals

Where, pursuant to this Agreement, any document or proposed action by the Redeveloper is submitted by it to the Authority, and the Redeveloper has been notified in writing by the Authority that the same is approved or is satisfactory, such determination shall be conclusively deemed to be a final determination by the Authority with respect to such particular document or proposed action for which such approval or notice of satisfaction was given.

Where the consent or approval of the Authority is required hereunder, such consent or approval shall not be unreasonably withheld or delayed. Failure of the Authority to disapprove in writing any written request of Redeveloper within 30 working days from the Authority's receipt of such request shall constitute approval.

Section 903: How Agreement Affected by Provisions Being Held Invalid

If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected thereby, is such remainder would then continue to conform to the requirements of applicable laws, and of the Plan.

Section 904: Covenants to be Enforceable by Authority and United States

The covenants herein contained, which are expressed to be covenants running with the land, shall be stated or incorporated by reference in any instrument of conveyance or lease relating to the Property or any portion thereof or any interest therein and shall in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by, the Authority (and the United States in the case of the covenants provided in Section 301(a)(2) hereof) against the Redeveloper (including its successors and assigns to or of the Property or any part thereof or any interest therein and any party in possession or occupancy of the Property or any part thereof). In amplification, and not in restriction of the provisions hereof, it is intended and agreed that the Authority shall be deemed a beneficiary of the covenant provided in Section 301(a)(2) hereof, both for and in its own right and also for the purpose of protecting the interests of the community and the other parties, public or private, in whose favor or for whose benefit such covenants have been provided, and such covenants shall be in force and effect, without regard to whether the Authority or the United States has at any time been, remains or is an owner or in possession of any land to, or in favor or, which the covenants relate.

It is the intention of the Authority that the benefit of the covenants running with the land which are contained in any instrument of conveyance relating to the Property shall be enforceable only by the Authority (and the United States in the case of the covenant provided in Section 301(a)(2) hereof) and those holding title to an interest in the Property and that such covenants shall not be enforceable by transferees of other land owned by the Authority in the area covered by the Plan.

Section 905: Parties Barred From Interest in Project

No member of the Congress of the United States of America shall be admitted to any share or part hereof, or to any benefit to arise therefrom.

Section 906: Authority's Members and Officers Barred From Interest

a. No member, official or employee of the Authority shall have any personal interest, direct or indirect, in this Agreement or the Redeveloper, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official or employee of the Authority shall be personally liable to the Redeveloper or any successor in interest in the event of any default or breach by the Authority or for any amount which may become due to the Redeveloper or to its successors or on any obligations under the terms of this Agreement.

b. After the date hereinabove first written, the Redeveloper shall not, without a prior finding by the Authority that such action is consistent with the public interest, employ in connection with its obligations under this Agreement, any person who has participated in the planning or execution of the Plan or related Project and who is named on any list which may be furnished by the Authority to the Redeveloper as having so participated, or permit any such person to directly or indirectly acquire an interest (except an interest based upon the ownership of its capital stock if such stock is publicly held or offered) in the Redeveloper or in the Property prior to the completion of the improvements thereon in accordance with this Agreement and the Plan.

c. The Redeveloper covenants that it has not employed or retained any company or person (other than a full-time bona fide employee working for the Redeveloper) to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person any percentage, or brokerage fee, contingent upon or resulting from the execution of this Agreement.

Section 907: Approvals and Notices

Except as otherwise specifically provided in this Agreement, whenever under this Agreement approvals, authorizations, determinations, satisfactions, or waivers are required or permitted, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing signed by a duly authorized officer of the Authority or Redeveloper, and shall be deemed given when deposited in the United States mail and sent registered or certified, postage prepaid, to the principal office of the party to whom it is directed, which is as follows:

Redeveloper: South End/Lower Roxbury Open
Space Land Trust, Inc.
P.O. Box 180923
Boston, Massachusetts 02118

with a copy to:

John Achatz, Esquire
Brown, Rudnick, Freed & Gesmer
One Financial Center
Boston, Massachusetts 02111

Authority: Director, Boston Redevelopment Authority
City Hall
Boston, Massachusetts 02201

The parties shall promptly notify each other of any change their respective addresses set forth above.

Notice and other communications to mortgagees and holders of construction loan agreements shall be deemed given when deposited in the United States mail and sent registered or certified, postage prepaid, to the last known address of the party concerned. Any requests for approvals made by the Authority to the Redeveloper where such approvals shall be deemed granted after a period of non-reply by the Authority shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in boldface type:

"NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY.
FAILURE TO RESPOND WITHIN _____ BUSINESS DAYS
SHALL RESULT IN AUTOMATIC APPROVAL."

Section 908: Matters to be Disregarded

The titles of the several articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting and if the provisions of this Agreement.

Section 909: Obligation to Continue

Except as to obligations to be performed at or prior to the time of closing of the sale and conveyance of fee simple title to and delivery of possession of the Property, the provisions of this Agreement shall survive the time of closing and the sale and conveyance of fee simple title to and the delivery of possession of the Property to the Redeveloper, but shall not survive issuance of the Certificate of Completion by the Authority except to the extent stated herein or in the Deed.

Section 910: Excusable Delays

For the purposes of any of the provisions of this Agreement, neither the Authority nor the Redeveloper, as the case may be, shall be considered in breach of or default in its obligations with respect to the preparation of the Property for redevelopment, or the beginning and completion of construction of the improvements, or progress in respect thereto, in the event of unavoidable delay in the performance of such obligations due to causes beyond its control and without its fault or negligence, including but not restricted to, acts of God, or of the public enemy, acts of the government, acts of the other party, fires, floods, or other casualties, epidemics, quarantine restrictions, labor disputes, freight embargoes, and unusually severe weather or delays of sub-contractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Authority with respect to the preparation of the Property for redevelopment or of the Redeveloper with respect to construction of the improvements, as the case may be, shall be extended for the period of the enforced delay. Provided, that the party seeking the benefit of the provisions of this Section shall, within a reasonable period after the beginning of any such enforced delay, have first notified the other party thereof in writing stating the cause or causes thereof and requested an extension for the period of the enforced delay. In calculating the length of the delay, the Authority shall consider not only actual work stoppages but also any consequential delays resulting from such stoppages as well. In no event shall any financing difficulty or inability to secure a building permit be a cause for an extension hereunder. Failure to secure a building permit pursuant to Section 210 hereinabove shall, only with the concurrence of the Authority, be cause for such extension.

Section 911: Advertising

The Redeveloper agrees for itself, its successors, and assigns, that during construction and thereafter the Redeveloper, and its successors and assigns, shall include in all advertising for the sale or rental of the Property a statement to the effect (a) that the Property is open to all persons without discrimination on the basis of race, religion, sex, color or national origin and (b) that there shall be no discrimination in public access and use of the Property to the extent that it is open to the public. Without limiting the foregoing, the Redeveloper shall include in all advertising (including signs) for sale and rental of the whole or any part of the Property the legend "An Open Occupancy Development" in type or lettering of easily legible size and design.

Section 912: Agreement Binding on Successors and Assigns

The respective provisions of this Agreement, in accordance with their terms, shall be binding upon, and shall inure to the benefit of the successors and assigns of the Redeveloper and the public body or bodies succeeding to the interests of the Authority, and to any subsequent grantees of the Property.

Neither the Redeveloper nor any successor in title to the Property shall be liable for any breach hereof accruing after the period during which it was owner of the Property. No holder of any mortgage on the Property shall be deemed to be the owner thereof until it shall have foreclosed the mortgage thereon or shall have acquired title by deed in lieu of foreclosure.

The Authority agrees to look only to the assets of the Redeveloper and not to the assets of any general or limited partner, member, stockholder, director, officer, trustee or beneficiary of the Redeveloper in the event of any breach by the Redeveloper of its obligations hereunder, it being understood that in no event shall the assets of any general or limited partner, member, stockholder, director, officer, trustee or beneficiary of the Redeveloper, other than their interest in the Property, be subject to liability for any such breach.

Section 913: Amendment of Plan

No modification or amendment to any provisions of the Plan shall be effective with respect to the property, unless such modification or amendment of the Plan has been consented to by the Redeveloper and everyone entitled to be given notice under Section 803 prior to becoming effective with respect to the Redeveloper.

Section 914: Waivers

Any right or remedy which the Authority or the Redeveloper may have under this Agreement, or any of its provisions, may be waived in writing by the Authority or the Redeveloper, as the case may be, without execution of a new or supplementary Agreement, but any such waiver shall not affect any other rights not specifically waived, and no waiver by the Redeveloper of a right under Section 801 or 802 shall be effective unless approved in writing by everyone then entitled to be given notice under Section 803.

IN WITNESS WHEREOF, on the day and year first above written at Boston, Massachusetts, the parties hereto have caused this Agreement in three counterparts to be signed, sealed and delivered by their duly authorized officers or representatives, respectively.

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Paul Barrett, Director

Approved as to form:

Assistant General Counsel

SOUTH END/LOWER ROXBURY OPEN
SPACE LAND TRUST, INC.

By: _____
Elizabeth G. Johnson,
President

By: _____
_____, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

November __, 1992

Then personally appeared the above-named Paul Barrett who executed the foregoing Agreement on behalf of the Boston Redevelopment Authority and acknowledged the same to be the free act and deed of said Authority, before me,

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

November __, 1992

Then personally appeared the above-named Elizabeth G. Johnson, President of South End/Lower Roxbury Open Space Land Trust, Inc., and acknowledged the same to be the free act and deed of said corporation, before me,

John Achatz, Notary Public
My commission expires:
August 5, 1999

Based on RAL6/R-10-B-1.LDA

EXHIBIT A
DESCRIPTION OF LAND

DELPHI::WPO:[ACHATZJ]SOUTHEND.AD7;7

